

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates to All Actions.

PLAINTIFF(S)

**MASTER SHORT FORM
COMPLAINT AND JURY TRIAL
DEMAND**

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

1. Plaintiff, Jacqueline D. Atkinson, states and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Jacqueline D. Atkinson, is a resident and citizen of the State of South Carolina and claims damages as set forth below.

3. Plaintiff's Spouse, Charles Atkinson, is a resident and citizen of the State of South Carolina, and claims damages as set forth below.

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where this Complaint would have been filed absent the direct filing order by this Court is

Florence, South Carolina.

6. Plaintiff brings this action:

X On behalf of [herself];

_____ In a representative capacity as the _____ of the
_____ having been duly appointed as the
_____ by the _____ Court of _____.

A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[Cross out if not applicable.]

FACTUAL ALLEGATIONS

7. On or about 3/28/2012, Plaintiff underwent surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at the McLeod Regional Medical Center in Florence, South Carolina, by Dr. Thomas Mezzanotte.

8. Contaminants introduced into Plaintiff’s open surgical wound as a direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

9. As a result of Plaintiff’s infection caused by the Bair Hugger, Plaintiff has undergone IV antibiotics for infection, revision arthroplasty, wound vac treatment as well as multiple staged procedures ending in the amputation on or about 3/28/2012 through

12/23/2013, at McLeod Medical Center, 555 E Cheves St., Florence South Carolina by
Dr(s). Thomas Mezzanotte, Kyle Watford, Hudnal Paschal.

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO HERSELF/HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 SURVIVORSHIP ACTION
 ECONOMIC LOSS

(b) Plaintiff's spouse claims damages as a result of (check all that are
applicable): [*Cross out if not applicable.*]

 X LOSS OF SERVICES
 X LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to
Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are
herein adopted by reference (check all that are applicable):

 X FIRST CAUSE OF ACTION - NEGLIGENCE;
 X SECOND CAUSE OF ACTION - STRICT LIABILITY;
 FAILURE TO WARN
 DEFECTIVE DESIGN AND MANUFACTURE
 X THIRD CAUSE OF ACTION – BREACH OF EXPRESS
WARRANTY;

- ____ FOURTH CAUSE OF ACTION- BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY LAW OF THE STATE OF _____, §§ _____;
- ____ FIFTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT;
- ____ SIXTH CAUSE OF ACTION – VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT;
- ____ SEVENTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT;
- ____ EIGHTH CAUSE OF ACTION- VIOLATION OF THE MINNESOTA FALSE ADVERTISING ACT;
- ____ NINTH CAUSE OF ACTION- CONSUMER FRAUD AND/OR UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER LAW OF THE STATE OF _____, §§ _____ ;
- X TENTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION;
- X ELEVENTH CAUSE OF ACTION- FRAUDULENT MISREPRESENTATION;
- ____ TWELFTH CAUSE OF ACTION – FRAUDULENT CONCEALMENT;
- X THIRTEENTH CAUSE OF ACTION – LOSS OF CONSORTIUM; and
- X FOURTEENTH CAUSE OF ACTION – UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

[Cross out if not applicable.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: July 15, 2016

Respectfully submitted,

s/Daniel S. Haltiwanger
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